TETUAN TOKOYAKI PROPERTY SDN BHD

v.

SAM KOK SANG & ORS

HIGH COURT MALAYA, TAIPING
VT SINGHAM JC
[ORIGINATING SUMMONS NO: 24-61-2000]
15 NOVEMBER 2000

LAND LAW: *Summary possession of land - Whether occupier a trespasser - Occupier applied for land to state authority - Occupier paid for house assessments - Supply of water, electricity and litter bins to land by state authority - Whether occupier had implied permission to occupy land - Rules of the High Court 1980, O. 89*

By an originating summons dated 30 March 2000, the plaintiff applied under O. 89 Rules of the High Court 1980 ('RHC') for an order to be granted possession of a piece of land ('the said land') against the defendants. The grounds of the plaintiff's application was supported by an affidavit affirmed on 20 March 2000 by one Mr. Toh Chin Hin, a director of the plaintiff's company. In the meantime on 26 June 2000, the plaintiff had obtained judgment against the 2nd and 3rd defendants by default as they were absent.

The main issue to be determined was whether on the facts summary possession under O. 89 RHC was suitable against the 1st defendant.

Held:

[1] An illegal squatter has no protection in law or in equity to enable him to claim a right to live or continue to live or occupy a piece of land. The plaintiff as the registered owner was entitled to evict the 1st defendant by summary procedure.

[2] The fact that the 1st defendant had applied to the state authority for the said land did not *ipso facto* give him the right to live on the said land unless he could show that it was granted to him expressly or impliedly by the plaintiff, or the plaintiff's predecessor in title or the state authority to live on the said land. The fact that he had submitted an application form to the state authority showed that he had not obtained the consent of the state authority to live on the said land.

[3] The supply of water, electricity and litter bins by the relevant authorities did not necessarily mean that the state authority had impliedly given the 1st defendant permission to live on the said land. Further, that was not stated nor raised in the affidavit of the 1st defendant. A statement or fact used or relied on as a ground to support, to prove or disprove or to oppose an application for summary possession or any other application before the court must necessarily be expressed in the affidavit and not raised by way of a statement from the bar by counsel for one of the parties or litigant. The 1st defendant was, therefore, an illegal squatter or trespasser on the said land which belonged to the plaintiff.

[4] Mere payment of assessment for the house on the said land did not impliedly grant the 1st defendant the consent to live on the said land because ss. 127 and 163(1) of the Local Government Act 1956 merely empowers the local authority to impose charges for buildings constructed within its jurisdiction.

[5] In order to successfully oppose this summary procedure, the 1st defendant ought to have at least adduced evidence and/or produced a letter from the state authority or the plaintiff's predecessor in title to show that the 1st defendant's initial entry and his continued occupation of the said land was with the permission or agreement of the state authority or the plaintiff's predecessor in title. There was no such evidence. This was a clear case of the 1st defendant deliberately going into another's land, putting up a building and living there unlawfully. The 1st defendant did not even come under the class or category of persons whose entry was lawful at the inception but subsequently ceased to be so.

[6] There was no serious dispute or arguable issues which prevented the plaintiff from using this summary procedure. The 1st defendant's grievance or claim was entirely against the state authority and not against the plaintiff and nothing whatsoever had been raised in his affidavit to call for further investigation so as to prevent the summary procedure for eviction.

[7] There were no *bona fide* triable issues for trial. Therefore, the originating summons for summary eviction by the plaintiff under O. 89 RHC should be allowed with costs.

Obiter:

[1] If the courts are to lean too much in favour of people who enter illegally into land belonging to others and thereafter allege or attempt to claim interest in equity with a view to oppose an application for summary eviction, it will not only frustrate lawful claims by registered owners for summary eviction against illegal squatters but may result in registered owners resorting to self-help remedies which no doubt will have other consequences and may result in a breach of the peace. That is not encouraged.

[Plaintiff's application for summary eviction against 1st defendant allowed with costs.]

Case(s) referred to:

Bohari Taib & Ors v. Pengarah Tanah Galian Selangor [1991] 1 CLJ 647; [1991] 1 CLJ (Rep) 48 ***(dist)***

Eng Mee Yong & Ors v. V Letchumanan [1979] 2 MLJ 212 ***(foll)***

Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors [1994] 1 MLJ 740 ***(dist)***

Government of the State of Negeri Sembilan & Anor v. Yap Chong Lan & Ors And Lesco Development Corporation Sdn Bhd v. Yap Chong Lan & Ors [1984] 2 MLJ 123 ***(foll)***

Lembaga Kemajuan Negeri Pahang v. D Chandran [2001] 1 CLJ 271 ***(dist)***

Menah Sulong v. Lim Soo & Anor [1983] 1 CLJ 26; [1983] CLJ (Rep) 263 ***(foll)***

Minister of Labour, Malaysia v. Chan Meng Yuen & Another Appeal [1992] 2 MLJ 337 ***(foll)***

Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 ***(foll)***

Norimah Mohamed & Ors v. Bukit Lenang Development Sdn Bhd & Other Appeals [2000] 3 CLJ 133 ***(refd)***

Salim Ismail & Lain-lain v. Lebbey Sdn Bhd (No 2) [1997] 1 CLJ 102

Shaheen Abu Bakar v. Perbadanan Kemajuan Negeri Selangor [1999] 1 CLJ 74 ***(dist)***

Syed Ibrahim Syed Abdul Rahman v. Liew Su Chin [1984] 1 MLJ 160 ***(foll)***

Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri & Anor [1993] 1 CLJ 261 ***(foll)***

Legislation referred to:

Local Government Act 1976, ss. 127, 163(1)
National Land Code, ss. 48, 340(1)
Rules of the High Court 1980, O. 89

Other source(s) referred to:

Supreme Court Practice, 1991, vol 1, p 1576

For the plaintiff - Shah Rizal Alias (Faisal Mohd Hanafiah); M/s Faizal Azian & Co
For the defendants - P Awtar Singh Saini; M/s AS Saini & Assoc

a

JUDGMENT

VT Singham JC:

Plaintiffs' Claim For Summary Possession Under Order 89 RHC 1980

b By an originating summons dated 30 March 2000 (encl. 3), the plaintiffs applied under O. 89 of the Rules of the High Court 1980 for an order to recover the land known as H.S.(D) L & M 12195 PT 12613 in the Mukim Assam Kumbang, District of Larut & Matang, Negeri Perak (hereinafter referred to as "the said lot") against the 1st and 2nd defendants and occupiers of the said lot and being occupied by the 1st and 2nd defendants and the other c occupiers. The grounds of the plaintiffs' application is supported by an affidavit affirmed on 20 March 2000 by Mr. Toh Chin Hin, a director of the plaintiffs-company. By the affidavit in support of the application, the plaintiffs *inter alia*, have stated as follows:

d **Affidavit Of The Plaintiffs Dated 20 March 2000 In Support Of The Application (Enclosure 2)**

(a) the plaintiffs are the registered owners of the said lot and exhibited a copy of title to the said lot which was marked as exh. 'TP1'.

e (b) that the defendants and all the other occupiers of the said lot have at all material times been living on the said lot without licence, permission and/or agreement from the plaintiffs and exhibited a copy of the plan of the location of the said lot which is occupied by the defendants which was marked as exh. 'TP2'.

f (c) that the 1st defendant is living on premises known as No: KB 14E and the 2nd defendant is living on premises No: KB 23A and referred to the plan of the location and the plaintiffs do not know the other occupiers of the premises on the said lot.

g (d) that the defendants are in fact not tenants or tenants holding over and have entered into the said lot and continued to live without consent or agreement of the plaintiffs or without consent or agreement from any of the previous owners of the said lot.

(e) the plaintiffs have on several occasions claimed from the defendants and/ h or each and every occupiers of the said lot to vacate the said lot and to return possession to the plaintiffs which claim was done through the plaintiffs' solicitors who issued a notice of claim dated 3 December 1999 against the defendants but the defendants have failed, refused and/or breached to comply with the said notice and a copy of the said notice i was attached and marked as exh. 'TP3'.

(f) as the registered owner of the said lot, the plaintiffs are not prevented from making this application.

In the circumstances, the plaintiffs prayer in the originating summons is for the plaintiffs to be granted possession of the said lot occupied by the defendants and/or other persons who are occupying without permission or agreement and costs. In the meantime, it is important to mention at this stage that on 26 June 2000, the plaintiffs had obtained judgment against the 2nd and 3rd defendants by default as they were absent.

1st Defendant's Affidavit-In-Reply Dated 26 June 2000 (Enclosure 17)

a) the 1st defendant on the other hand, by an affidavit affirmed on 26 June 2000 has *inter alia*, denied the allegations of the plaintiffs as contained in their affidavit dated 20 March 2000 and that he has no knowledge that the plaintiffs are the registered owners of the said lot.

b) that he has applied for a housing lot on the government land in which his house has been constructed since 1976 and that he was directed to complete the Form only in 1989 and attached a copy of the said application Form from the Land Office Taiping and a copy of the receipt for submitting the said application.

c) that he has been paying assessment for his house to Majlis Perbandaran Taiping since 1984 and attached copies of the receipts for the said payment which was marked as exh. S2.

d) despite several request the Land Office has todate failed and/or refused to issue the title to his house.

e) he was surprised when he was informed that the plaintiffs have been given title to his said land pursuant to a Title which was issued in 1999.

f) that the Land Office did not negotiate with him to obtain his land in accordance with the standard procedures.

g) he believes that he has the right on the said lot as the owner or in equity and **he need not obtain the consent of the plaintiffs** to continue to live on the said lot.

h) that he has been given to understand the plaintiffs have also obtained other land in his kampung and that many of the directors of other development companies who have been given other pieces of land in the area of his kampung are members of the same family.

a i) that he has been given to understand by his solicitor which he believes and in the circumstances the procedure under O. 89 Rules of the High Court 1980 has been misused.

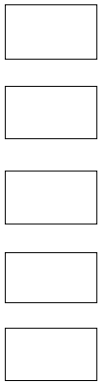
The contents of the said application and the application Form which was attached and marked as exh. S1 reads as follows:

b

Permohonan Untuk Tapak Rumah
Rancangan Perkampungan Tersusun

KAMPONG BANGGALI

c



d

e

No. Siri: … Bayaran berjumlah $10.00 telah dijelaskan Melalui Rt.No: … pada ...

I. Butir-Butir Diri Pemohon

f

1. Nama Pemohon **SAM KOK SANG @ THAM SOW SENG**

   K/P: **1693697 (Biru)**

2. Alamat Surat Menyurat **KB. 14-E, Kampong Banggali, Jalan Simpang, Tpg.**

g

3. Umur **49+ tahun** 4. Tempat & Tarikh Lahir: **Kuala Kangsar – 6.12.1939**

5. Lama tinggal di Daerah Laurt & Matang: **Lebeh kurang 35 tahun** bulan/ tahun

h

6. Pekerjaan: **Berniaga** Pendapatan: **$600.00** s.b.

7. Tempat Bekerja: **Taiping**

8. Nama dan Alamat: **Persendirian**

i

II. Butir-butir … *a*

1. Nama: **POH SIANG TIANG** K/P: **1683440 (Biru)**

2. Umur: **40 tahun** 3. Tempat & Tarikh Lahir: **Parit Buntar, Krian**

4. Pekerjaan: **Suri rumah tangga** 5. Pendapatan: $ **...** s.b. *b*

6. Tempat Kerja: ...

7. Nama dan Alamat majikan: ...

III. Butir-butir tanggungan seramai 4 orang *c*

1. Isteri **1 orang**

2. Anak Lelaki **1 orang**

3. Anak Perempuan **2 orang**

4. Lain-lain tanggungan **...** orang *d*

IV. Keupayaan memajukan tanah dipohon

1. Jumlah Simpanan: **8,000.00 (Wang tunai dalam tangan)** Nama Bank: ...

   No. Kira-kira: … *e*

2. Lain-lain Punca: ...

V. Butir-Butir Tanah Yang Dimiliki olih Pemohon/atau suami/isteri

Jenis Kegunaan	No. Suratan	Mukim	Bahgian Kepunyaan	*f*
(Pertanian/Perumahan)	**Hakmilik**	**_____**	**_____**	
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...	...	...	...	
...	...	...	...	

VI. Tempat Tinggal Sekarang *g*

1. Alamat Tempat Tinggal: **KB. 14-E, Kampong Banggali, Jalan Simpang, Taiping.**

2. Rumah Sendiri-**rumah didirikan di atas tanah kerajaan yang mana sedang di pohon.** *h*

VII. Permohonan-permohonan untuk mendapat tapak rumah yang pernah dikemukakan ke Pejabat Tanah.

i

Kawasan	Tarikh	Keputusan	No. Fail Pej. Tanah
1. Ada memohon tetapi tidak berjaya sekali-kali pun.			...
2. ...			...

VIII. Saya mengaku segala keterangan diatas adalah benar. Sekiranya mana-mana butir yang dikemukakan tidak lengkap atau tidak benar maka saya faham yang permohonan saya ini bolih dibatalkan.

Tarikh: 13hb. Oktober, 1989 (SAM KOK SANG @ THAM SOW SENG)
...
Tandatangan Pemohon

IX. Perakuan Ketua Jabatan/Ketua Kampong/Penghulu

Bagi kakitangan Kerajaan/Badan Berkanun.

Saya sahkan keterangan yang diberi diatas adalah benar.

Tarikh: **13.10.1989** T/Tangan: ...
HAJI MOHD. JAIS BIN YUNUS
KETUA KAMPONG
COP JAWATAN: KOTA BARAT
ASSAM KUMBANG, TAIPING

Nota: Borang yang telah dilengkapkan hendaklah dikembalikan ke Pejabat Tanah, Taiping pada atau sebelum 15.12.1988.

UNTUK KEGUNAAN PEJABAT

Submissions Of Plaintiffs' Counsel

1) Plaintiffs' application is under O. 89 Rules of the High Court 1980 by way of summary procedure to obtain possession of the said lot.

2) the plaintiffs are the registered owners of the said lot and referred to the exhibit of the title to the said lot which is registered in the name of the plaintiffs.

3) there is no denial that the 1st defendant is living on the said lot and referred to the affidavit in reply of the 1st defendant encl. 17.

4) prior to possession by the plaintiffs, the said land belonged to Perak State Government.

5) the defendants did not obtain permission or consent from the plaintiffs.

6) the plaintiffs claim against the 1st defendant is in respect of the said lot and referred to exh. TP2, the plan of the location of the said lot and also referred to exh. TP3, the Notice of demand dated 3 December 1999 which was issued by the plaintiffs' solicitors to the defendants.

7) there is no relationship whatsoever between the plaintiffs and the defendants.

8) the 1st defendant is living on the said lot without the consent of the plaintiffs.

9) the 1st defendant is a trespasser simpliciter. He did not obtain consent from the previous owners of the said lot, the Perak State Government. He also referred to s. 340(1) of the National Land Code.

10) he referred to para. 10 of the 1st defendant's affidavit in reply encl. 17 wherein the 1st defendant has stated that he has the right on the said lot as the owner or in equity and that he need not obtain the consent of the plaintiffs to continue to live on the said lot to which he submitted that the 1st defendant has no right to live on the said lot.

11) he referred to para. 6 of the 1st defendant's affidavit in reply wherein the 1st defendant has stated that he has paid assessment to Majlis Perbandaran Taiping since 1984 for his said house. On this contention by the 1st defendant, the plaintiffs' counsel submitted that the said lot and house is within the jurisdiction of the Majlis Perbandaran Taiping, the Local Authority and referred to ss. 127 and 163(1) of the Local Government Act 1976 which reads as follows:

Section 127 ***Power to impose rates***

> The local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority area for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any other written law.

Section 163 ***Provision for rating buildings on state or reserved land***

> (1) In the case of buildings situated on State land or on land reserved for a public purpose and not occupied by the Federal or State Governments the local authority, with the approval of the State Authority, may impose the rates referred to in Section 127 upon the annual value or [improved value] of all or any of such buildings, and the occupiers of such buildings shall be liable to pay the said rates.

(2) The provisions of this Part shall apply to any rate imposed under sub section (1) except that in the application thereof references to a "holding" shall be deemed to be references to a "building", and references to the "owner" of a holding shall be deemed to be references to the "occupier" of a building.

12) the provisions of ss. 127 and 163(1) of the Local Government Act 1976 does not mean that consent has been given to the 1st defendant to live on the said lot. He submitted that the Local Authority is entitled to impose charges for houses built whether legally or illegally within their jurisdiction.

13) he referred to the case of *Bohari bin Taib & Ors v. Pengarah Tanah Galian Selangor* [1991] 1 CLJ 647 and submitted that the facts in Bohari's case could be distinguished when compared to the facts as stated by the 1st defendant. The plaintiffs' counsel submitted that in *Bohari*'s case, the initial entry was valid and that this is a distinguishing factor to the facts in this case in which there is no evidence of any legal entry to the said lot.

14) the 1st defendant did not state in his affidavit in reply that he has obtained the permission of the state authority.

15) the plaintiffs' counsel also referred to the case of *Shaheen bte Abu Bakar v. Perbadanan Kemajuan Negeri Selangor* [1999] 1 CLJ 74 and distinguished the facts to the 1st defendant's case. In *Shaheen*'s case, the plaintiffs' counsel submitted there was encouragement by the state authority but in the plaintiffs' case there is no evidence of any encouragement by the plaintiffs, the state authority or the predecessors in title.

16) pursuant to the affidavit in reply of the 1st defendant encl. 17, there is no evidence or averment to state that the 1st defendant was encouraged or had obtained the consent of the state authority to occupy the said lot in order for the 1st defendant to claim any right on the said lot.

17) the plaintiffs' counsel referred to the case of [3]*Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors* [1994] 1 MLJ 740 at 744.

18) in the circumstances, the procedure under O. 89 Rules of the High Court 1980 was correct and is in order and that there is no issue for trial.

3. In the circumstances, the plaintiffs' counsel submitted that there was no issue to go for trial as the 1st defendant is a trespasser and the plaintiffs should be given possession as prayed in the originating summons (enclosure 3).

Submissions Of 1st Defendant's Counsel

Counsel for the 1st defendant on the other hand submitted as follows:

1) there is triable issue to proceed for hearing.

2) he referred to para. 3 of the 1st defendant's affidavit in reply encl. 17 which is basically a denial and lack of knowledge to paras. 1, 2, 3 and 4 of the plaintiffs' affidavit in support of the originating summons.

3) that the 1st defendant has obtained the consent of the state government through Majlis Perbandaran Taiping and that he has applied for a lot on the state land on which the 1st defendant's house has been constructed since 1976 and that the 1st defendant was directed to complete the application Form only in 1989. He contended that the payment for assessment has been paid for 17 years since 1983 till first half of 2000.

4) the premises belonging to the 1st defendant has been provided with all facilities ie, supply of water and electricity and litter bins.

   He relied on the case of *Bohari* and *Shaheen* to support his arguments.

5) the issue is whether the 1st defendant has obtained the consent from the state authority and if that is so, the 1st defendant is not a trespasser and that whether the proceedings could be brought under O. 89 Rules of the High Court 1980.

6) from the facts, in this case, and the cases he has relied on, O. 89 is not the proper mode of proceedings as there is triable issue and that the plaintiffs' summons should be dismissed with costs.

Reply – Submissions By The Plaintiffs' Counsel

(1) he referred to ss. 127 and 163(1) of the Local Government Act 1976 and that the Local Government is only to fix boundary for assessment.

(2) there is no permission given even impliedly by the state authority or the first owner of the said lot.

Issue

The main issue to be determined is whether, on the facts in this case, summary possession under O. 89 Rules of the High Court 1980 is suitable against the 1st defendant.

Findings By This Court

As contended by the plaintiffs' counsel, this court is in agreement that the facts in *Bohari*'s case and *Shaheen*'s case are distinguishable and the principle enunciated in those two cases which supported the occupier's claim in those cases does not apply to the facts in this case. In *Bohari*'s case, there was in fact a letter dated 25 October 1980 from the Collector of Land Revenue, Sabak Bernam which states that the State Executive Council had on 4 September 1980 approved the alienation of the land occupied and carrying out farming to the appellants and other selected settlors which by implication means that there was continued consent implied or expressed by the state authority even after the TOL had expired.

In *Bohari*'s case, His Lordship Mohamed Azmi SCJ in delivering the judgment of the Supreme Court said:

> In our opinion, for the purpose of the summary procedure, a distinction should be made between squatters simpliciter who have no rights whatsoever, and occupiers with licence or consent, and as well as tenants and licencees holding over. It may be impossible to establish the existence of any triable issue in the case of bare squatters, but the position of tenants and licencees holding over, or persons occupying with implied or expressed consent of the owner may be different.

On the facts in *Bohari*'s case, the Supreme court held that there were triable issues on the absence of either licence or consent as alleged by the respondent.

In *Shaheen*'s case, Zakaria Yatim FCJ who delivered the judgment of the Federal Court said at p. 87.

> Similarly in the present case, if the initial entry of the settlers on the said land was unlawful, they had committed an offence under s. 425(1) of the National Land Code. They could also be evicted under Order 89 for being squatters simpliciter. From the evidence, the state government knew of their presence on the said land from December 1981. No action was taken to charge them under the National Land Code for illegally occupying the said land. No proceeding was taken to evict them under Order 89. From January 1988 the Menteri Besar knew about the settlers. He approved the renovation of their surau. He knew that the settlers were provided with water supply, roads and a community hall. As stated earlier, when the land was given to PKNS, it knew about the settlers. In our opinion, there is an arguable case that the settlers occupied the said land with acquiesence of the State Authority.

In *Salim bin Ismail & Lain-lain v. Lebbey Sdn Bhd (No. 2)* [1997] 1 CLJ 102, His Lordship Dato' Ahmad Fairuz JCA (as His Lordship then was and now FCJ) referred to the *Supreme Court Practice* 1991 vol. 1 at p. 1576 which *inter alia*, states as follows:

> On the other hand, like the default and summary procedures under O. 13 and O. 14, this order would normally apply only in virtually uncontested cases or in clear cases where there is no issue or question to try, i.e. where there is no reasonable doubt as to the claim of the plaintiff to recover possession of the land or as to wrongful occupation of the land without licence or consent and without any right, title or interest thereto. Where the existence of a serious dispute is apparent to a plaintiff, he should not use this procedure. If he does, the action may be struck out (*Henderson v. Law* [1984] 17 HLR 237, CA).

Whereas in the case before the court, there is no such letter of approval from the state authority in respect of the said lot apart from just a bare application from the 1st defendant which he claims was submitted to the state authority in 1989. This court is of the view that merely submitting or applying to the state authority for a piece of land or for the lot which the 1st defendant is occupying does not either impliedly or expressly grant a licence, consent or permission from the state authority for the 1st defendant to live or continue to live on the said lot. The allegation in para. 5 of the 1st defendant's affidavit in reply does not state whether the 1st defendant was advised by the state authority or any representative of the state authority for him to submit the application Form for the said lot and that in the meantime he could continue to occupy the said lot pending a reply from the state authority. The 1st defendant did not even state who had in fact instructed him in 1989 to submit the said application Form. This court is of the view that the fact that the 1st defendant had submitted the application Form to the state authority for the said lot would show that he has not obtained the permission or consent of the state authority for him to live or occupy the said lot. It would also show that he has entered into the said lot and continued to occupy as an illegal squatter notwithstanding that he has constructed the house as claimed by him and that he has paid assessment to the Majlis Perbandaran Taiping. It is the view of this court that an illegal squatter has no protection in law or in equity to enable him to claim a right to live or continue to live or occupy the said lot which the plaintiffs as the registered owners are entitled and have every right to evict the 1st defendant by summary procedure. In fact it is the view of this court that merely erecting a building unlawfully on the plaintiffs' lot and occupying is not sufficient to create any right or equity against the rightful owner of the said lot who is protected by title.

Therefore, the fact that the 1st defendant has applied to the said authority for the said lot does not *ipso facto* give him the right to live or to continue to live on the said lot unless he could show that it was in fact given to him either expressly or impliedly the permission or consent or agreement of the plaintiffs or the plaintiffs' predecessor in title or the state authority for him to live or continue to live on the said lot. As the 1st defendant has failed to show this consent or permission, the plaintiffs are entitled to summary eviction

against the 1st defendant and there is in fact no issue for trial. The 1st defendant has also no protection in equity because s. 48 of the National Land Code 1965 which reads as follows:

> Section 48 **No adverse possession against the State**
>
> No title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever.

The 1st defendant's second contention that he has paid assessment for his house to Majlis Perbandaran Taiping since 1984 and supported by receipts also does not give the 1st defendant the permission or right to live on the said lot which belongs to the plaintiffs. In fact, the whole of the 1st defendant's affidavit in reply expressly shows that his grievance is with the state authority for not having approved his application for the said lot and that his complaint is no doubt against the Land Office and that impliedly there is some discrimination in the way the said lot was approved to other owners. It is clear that the crux of the 1st defendant's claim which can be derived from his affidavit is that he has some grievance against the state authority for approving land unfairly to several individuals and that his complaint or grievance has nothing to do whatsoever against the plaintiffs' claim. It is the view of this court therefore that the 1st defendant should direct his grievance to the state authority and not to use that complaint with a view to deprive the plaintiffs from obtaining summary eviction against him.

By his affidavit in reply, the 1st defendant has in fact impliedly admitted that he has not obtained the permission of the plaintiffs to live or occupy the said lot as stated in para. 10 of his affidavit in reply wherein he has stated that he need not obtain the permission of the plaintiffs to live on the said lot as he believes that he has a right to the said lot as the owner or in equity. The 1st defendant has not stated the legal basis for him to claim his right on the said lot and the legal basis how he is deemed to be the owner of the said lot either in law or in equity. The 1st defendant has also not stated in his affidavit in reply the basis of his initial entry to the said lot and whether he has obtained the consent or permission or agreement of the plaintiffs' predecessor in title or the state authority except to state that his house was constructed since 1976 and that he has completed an application Form in 1989 to apply for the said lot. There is also no acknowledgement or response in writing from the state authority to his application except for a copy of the receipt for RM10 which was attached to his said application.

In *Lembaga Kemajuan Negeri Pahang v. D Chandran* [2001] 1 CLJ 271, there was at least a written reply from the state authority that the defendant's application in that case has been given attention and will be raised for decision by the state executive council which by implication gives the impression that the defendant could continue to occupy the land in question which in fact is an arguable point to oppose summary eviction but in the plaintiffs' case before this court, the 1st defendant has not shown any such reply from the state authority except for his bare application Form which certainly is not a criteria or a ground to oppose summary eviction by the plaintiffs who are the registered owners of the said lot.

As for the contention by the 1st defendant's counsel that the supply of water and electricity and litter bins has been provided, this court with regret is not able to accept that submission as a ground for him to continue to live on the plaintiffs' lot because firstly, by providing the said services or amenities does not necessarily mean that the state authority has impliedly given the 1st defendant permission to live or continue to live on the said lot, secondly, there is no averment since when this services or amenities were provided to the house in which the 1st defendant lives or continues to live and thirdly, this facts even if they were true were not stated or raised in the affidavit in reply of the 1st defendant. It is the view of this court that a statement which is made by the 1st defendant's counsel from the bar table and not pleaded in the affidavit is not acceptable as evidence on behalf of the 1st defendant. This court is of the view that a statement of fact which is used or relied as a ground to support to prove or disprove or to oppose an application for summary possession or any other application before the court must necessarily be expressed in the affidavit and not raised it by way of a statement from the bar table by counsel for one of the parties or litigant. In [(7)]*Minister Of Labour, Malaysia v. Chan Meng Yuen & Another Appeal* [1992] 2 MLJ 337 at 342, His Lordship Harun Hashim SCJ in delivering the judgment of the Supreme Court said in response to the submission of senior federal counsel for the Minister of Labour, Malaysia ...

> ... it was suggested by the learned senior federal counsel who appeared for the Minister that the policy decision was that as there is an alternative remedy available to the respondent to seek relief in the civil court the Minister has acted reasonably. That may be so but the Minister has not said so and we cannot accept a statement from the Bar as being the reason the Minister had in arriving at his decision. We can only look at the facts as stated in the affidavits before this court.

In *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609 at 615 His Lordship Gopal Sri Ram JCA in delivering the judgment of the Court of Appeal said:

> The only reference to the delay point is to be found in the address of counsel for the respondent in the court below and the explanation is in reality that of counsel and not of his client under oath. It is a principle fundamental to our system of adversarial litigation that evidence upon a matter must be given on oath. The practice of counsel giving evidence from the Bar, as was done in this case, is deprecated. To act as the learned judicial commissioner did in this case, is to ignore the very basic tenets of the law of evidence that is to applied by our courts. Here was a positive assertion on oath by the appellants that there had been inordinate delay. The proper way in which that was to be met was by way of an affidavit in answer, explaining the delay. Once this is done, then it is up to the judicial arbiter to accept or reject the explanation proffered. But to ride roughshod over such an important point, as was done here, does little to advance the course of justice according to the law.

In *Menah binti Sulong @ Minah binti Sulong @ Aminah binti Sulong v. Lim Soo & Anor* [1983] 1 CLJ 26, His Lordship H.T. Ong (CJ) in delivering the judgment of the Federal Court said:

> I think it is necessary in this case to emphasise once again that the Courts should give their decisions in strict accordance with the pleadings.

In the circumstances, this court is not obliged to consider or take into account the statement by the counsel for the 1st defendant from the bar table in reference to the supply of electricity and water to the 1st defendant's house in order to decide whether there is an issue to be tried as firstly, that statement is not affidavit evidence and secondly, that statement alone or taken as a whole does not even impliedly grant the 1st defendant permission to continue to live on the said lot. This court finds that the 1st defendant is an illegal squatter or trespasser on the said lot which belongs to the plaintiffs. In two consolidated appeals in *Government Of The State Of Negeri Sembilan & Anor v. Yap Chong Lan & 12 Ors. and Lesco Development Corporation Sdn. Bhd. v. Yap Chong Lan & 12 Ors.* [1984] 2 MLJ 123, the claim of the respondents to an equitable right to remain on their respective lots to which they have been resettled was disallowed by the Federal Court. In that cases despite evidence to support the occupiers claim which was agreed between the parties that the collector of land revenue had granted permission to the occupiers to build houses on their lots and were able to obtain water, supply on the collector's recommendation, the Federal Court reversed the decision of the High Court which at the first instance held that the claimant had acquired an equitable right to remain on their respective lot.

As for the contention by the plaintiffs' counsel that mere payment of assessment for the 1st defendant's house does not impliedly give him the consent or permission to live on the said lot because ss. 127 and 163(1) of the Local Government Act 1976 empowers the Local Authority to impose

charges, this court agrees that the charges of assessment is imposed by the Local Authority because there is a building constructed within the jurisdiction of the Local Authority and in this case, the Majlis Perbandaran Taiping and that fact alone being payment of assessment does not grant the 1st defendant permission or consent to continue to live on the said lot. The Local Authority is not duty bound to inquire whether the occupier/occupiers of the building on the said lot is the registered owner, the tenant or the licensee or the tenant holding over. As so long as the building is occupied, the Local Authority being the Majlis Perbandaran is entitled to collect payment for assessment under the Local Government Act 1976.

In order to oppose this summary procedure, this court is of the view that the 1st defendant ought to have at least adduced evidence and or produced a letter from the state authority or the plaintiffs predecessor in title to show that the 1st defendant's initial entry and his continued occupation of the said lot was with the consent, permission or agreement of the state authority or the plaintiffs' predecessor in title. As the 1st defendant had failed to show or prove any of the above requirements, the plaintiffs are entitled to summary eviction. In fact there is no evidence or even any contention by the 1st defendant that he was encouraged by any particular person/s or any relevant authority to live in the said lot and/or to build a house and to continue to live on the said lot. This is a clear case of the 1st defendant deliberately going into another's land, put up a building and living there unlawfully and that he does not even come under the class or category of persons whose entry was lawful at the inception but has subsequently ceased to be so.

Based on the 1st defendant's affidavit in reply, this court is of the view that there is no serious dispute or arguable issue which is apparent to the plaintiffs and which prevents the plaintiffs from using this summary procedure. This court is not unmindful of the principle which does not allow the courts to resolve conflicts of evidence on affidavit. In *Eng Mee Yong & Ors v. V. Letchumanan* [1979] 2 MLJ 212 at 217 their Lordships in the Privy Council said that:

> Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be. In making such order on the application as he **"may think just"** the judge is vested with a discretion which he must exercise judicially. It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact have

> sufficient ***prima facie*** plausibility to merit further investigation as to their truth. Since this is a matter upon which the opinions of individual judges may reasonably differ, an appellate court ought not to interfere with the judge's exercise of his discretion under **section 327 of the National Land Code** unless the way in which he exercised it is shown to have been manifestly wrong.

This principle was subsequently applied in *Syed Ibrahim bin Syed Abdul Rahman v. Liew Su Chin (F)* [1984] 1 MLJ 160 at 163 wherein His Lordship Lee Hun Hoe CJ (Borneo) in delivering the judgment of the Federal Court said:

> It is of course quite right to say that it is undesirable to resolve disputes on affidavit evidence. Yet Judges are expected in applying the test to be critical of the affidavit evidence which must on the face be at least plausible.

In *Norimah bte Mohamed & Ors v. Bukit Lenang Development Sdn Bhd & Other Appeals* [2000] 3 CLJ 133, His Lordship Gopal Sri Ram JCA said summary procedure under O. 89 is not applicable to a case in which arguable issues have been raised.

However, this court is of the view that in the plaintiffs' case before this court, there is no conflict of evidence on affidavit except that the 1st defendant's affidavit seemed to disclose that he has a grievance against the state authority which requires no investigation for the purpose of this summary eviction.

Unless there are disclosed facts in the 1st defendant's affidavit in reply which call for investigation or could only be decided on hearing oral evidence, this court cannot just deny the plaintiffs' claim for summary eviction. In this case, as this court has already stated hereinbefore, the 1st defendant's grievance or claim is entirely against the state authority and not against the plaintiffs and nothing whatsoever has been raised in his affidavit to call for further investigation so as to prevent the summary procedure for eviction. This court is of the view that if the courts were to lean too much in favour of people who enter illegally into land belonging to others and thereafter allege or attempt to claim interest in equity with the view to oppose the application for summary eviction, it will not only frustate registered owners' claim for summary eviction against illegal squatters but may result in registered owners resorting to self help remedies which no doubt will have other consequences and is not encouraged as it might lead to cause breach of the peace.

This court is also of the view that there was no need for an affidavit in reply by the plaintiffs to the 1st defendant's affidavit in reply as there was nothing for the plaintiffs to rebut because the 1st defendant has not raised any issues against the plaintiffs to warrant a reply. In *Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri & Anor* [1993] 1 CLJ 261, His Lordship Edgar Joseph Jr. SCJ in delivering the judgment of the Supreme Court said:

The allegation of assault by the appellant's sister, without anything more, was hearsay as it was wholly unsupported by any evidence. Therefore, there was no need for an affidavit of denial to be filed by the prosecution as there was nothing to rebut and the concession by the prosecution that the assault was common ground was erroneous, and was not binding on the court.

The facts in *Esso Malaysia Bhd,* the case referred to by the plaintiffs' counsel has no relevance to the facts in this case before the court. The facts briefly in *Esso Malaysia Bhd,* one of the issues was whether a tenancy or licence was created and whether there was a proper determination of the licence if a licence was created. Also, that the plaintiffs had admitted that the defendants had entered into occupation of the lands with their licence or consent but that licence or consent had already been withdrawn or terminated and that the defendants had no right to continue to remain on the lands. Nevertheless, the court in that case still granted an order to the plaintiffs to recover the lands under O. 89 Rules of the High Court 1980.

In the 1st defendant's case, there is no issue of law or fact to be tried, there is no reasonable doubt as to the claim of the plaintiffs to recover possession of the lot and there is no serious dispute raised by the 1st defendant between himself and the plaintiffs. Further, there is no dispute that the 1st defendant had not obtained the permission of the plaintiffs and therefore this court finds that the plaintiffs are entitled to use this procedure under O. 89 Rules of the High Court 1980.

In the circumstances, and for the reasons stated above, this court is of the view that there are no *bona fide* triable issues on the facts in this case which has to proceed for trial.

Therefore, the originating summons for summary eviction by the plaintiffs under O. 89 Rules of the High Court 1980 and pursuant to encl. 3 is allowed with costs.